

AMENDED IN SENATE AUGUST 16, 2016
AMENDED IN ASSEMBLY MARCH 30, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2212

**Introduced by Assembly Member Harper
(Coauthor: Assembly Member Lackey)**

February 18, 2016

An act to amend Section 48900 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as amended, Harper. Pupils: suspensions and expulsions: bullying: electronic acts: video.

(1) Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent of the school district or the principal of the school determines that the pupil has committed any of various specified acts, including, but not limited to, engaging in an act of bullying by means of an electronic act. Existing law defines "electronic act" as the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, a message, text, sound, or image, or a post on a social network Internet Web site.

This bill would expressly include a video within the definition of what constitutes an electronic act.

(2) *This bill would incorporate additional changes to Section 48900 of the Education Code proposed by AB 2536 that would become*

operative if this bill and AB 2536 are both enacted and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48900 of the Education Code is amended
2 to read:
3 48900. A pupil shall not be suspended from school or
4 recommended for expulsion, unless the superintendent of the school
5 district or the principal of the school in which the pupil is enrolled
6 determines that the pupil has committed an act as defined pursuant
7 to any of subdivisions (a) to (r), inclusive:
8 (a) (1) Caused, attempted to cause, or threatened to cause
9 physical injury to another person.
10 (2) Willfully used force or violence upon the person of another,
11 except in self-defense.
12 (b) Possessed, sold, or otherwise furnished a firearm, knife,
13 explosive, or other dangerous object, unless, in the case of
14 possession of an object of this type, the pupil had obtained written
15 permission to possess the item from a certificated school employee,
16 which is concurred in by the principal or the designee of the
17 principal.
18 (c) Unlawfully possessed, used, sold, or otherwise furnished,
19 or been under the influence of, a controlled substance listed in
20 Chapter 2 (commencing with Section 11053) of Division 10 of the
21 Health and Safety Code, an alcoholic beverage, or an intoxicant
22 of any kind.
23 (d) Unlawfully offered, arranged, or negotiated to sell a
24 controlled substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code, an alcoholic
26 beverage, or an intoxicant of any kind, and either sold, delivered,
27 or otherwise furnished to a person another liquid, substance, or
28 material and represented the liquid, substance, or material as a
29 controlled substance, alcoholic beverage, or intoxicant.
30 (e) Committed or attempted to commit robbery or extortion.
31 (f) Caused or attempted to cause damage to school property or
32 private property.

1 (g) Stole or attempted to steal school property or private
2 property.

3 (h) Possessed or used tobacco, or products containing tobacco
4 or nicotine products, including, but not limited to, cigarettes, cigars,
5 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
6 packets, and betel. However, this section does not prohibit the use
7 or possession by a pupil of his or her own prescription products.

8 (i) Committed an obscene act or engaged in habitual profanity
9 or vulgarity.

10 (j) Unlawfully possessed or unlawfully offered, arranged, or
11 negotiated to sell drug paraphernalia, as defined in Section 11014.5
12 of the Health and Safety Code.

13 (k) (1) Disrupted school activities or otherwise willfully defied
14 the valid authority of supervisors, teachers, administrators, school
15 officials, or other school personnel engaged in the performance of
16 their duties.

17 (2) Except as provided in Section 48910, a pupil enrolled in
18 kindergarten or any of grades 1 to 3, inclusive, shall not be
19 suspended for any of the acts enumerated in this subdivision, and
20 this subdivision shall not constitute grounds for a pupil enrolled
21 in kindergarten or any of grades 1 to 12, inclusive, to be
22 recommended for expulsion. This paragraph shall become
23 inoperative on July 1, 2018, unless a later enacted statute that
24 becomes operative before July 1, 2018, deletes or extends that
25 date.

26 (l) Knowingly received stolen school property or private
27 property.

28 (m) Possessed an imitation firearm. As used in this section,
29 “imitation firearm” means a replica of a firearm that is so
30 substantially similar in physical properties to an existing firearm
31 as to lead a reasonable person to conclude that the replica is a
32 firearm.

33 (n) Committed or attempted to commit a sexual assault as
34 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
35 Code or committed a sexual battery as defined in Section 243.4
36 of the Penal Code.

37 (o) Harassed, threatened, or intimidated a pupil who is a
38 complaining witness or a witness in a school disciplinary
39 proceeding for purposes of either preventing that pupil from being

1 a witness or retaliating against that pupil for being a witness, or
2 both.

3 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
4 sold the prescription drug Soma.

5 (q) Engaged in, or attempted to engage in, hazing. For purposes
6 of this subdivision, “hazing” means a method of initiation or
7 preinitiation into a pupil organization or body, whether or not the
8 organization or body is officially recognized by an educational
9 institution, that is likely to cause serious bodily injury or personal
10 degradation or disgrace resulting in physical or mental harm to a
11 former, current, or prospective pupil. For purposes of this
12 subdivision, “hazing” does not include athletic events or
13 school-sanctioned events.

14 (r) Engaged in an act of bullying. For purposes of this
15 subdivision, the following terms have the following meanings:

16 (1) “Bullying” means any severe or pervasive physical or verbal
17 act or conduct, including communications made in writing or by
18 means of an electronic act, and including one or more acts
19 committed by a pupil or group of pupils as defined in Section
20 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
21 that has or can be reasonably predicted to have the effect of one
22 or more of the following:

23 (A) Placing a reasonable pupil or pupils in fear of harm to that
24 pupil’s or those pupils’ person or property.

25 (B) Causing a reasonable pupil to experience a substantially
26 detrimental effect on his or her physical or mental health.

27 (C) Causing a reasonable pupil to experience substantial
28 interference with his or her academic performance.

29 (D) Causing a reasonable pupil to experience substantial
30 interference with his or her ability to participate in or benefit from
31 the services, activities, or privileges provided by a school.

32 (2) (A) “Electronic act” means the creation or transmission
33 originated on or off the schoolsite, by means of an electronic
34 device, including, but not limited to, a telephone, wireless
35 telephone, or other wireless communication device, computer, or
36 pager, of a communication, including, but not limited to, any of
37 the following:

38 (i) A message, text, sound, video, or image.

39 (ii) A post on a social network Internet Web site, including, but
40 not limited to:

1 (I) Posting to or creating a burn page. “Burn page” means an
2 Internet Web site created for the purpose of having one or more
3 of the effects listed in paragraph (1).

4 (II) Creating a credible impersonation of another actual pupil
5 for the purpose of having one or more of the effects listed in
6 paragraph (1). “Credible impersonation” means to knowingly and
7 without consent impersonate a pupil for the purpose of bullying
8 the pupil and such that another pupil would reasonably believe, or
9 has reasonably believed, that the pupil was or is the pupil who was
10 impersonated.

11 (III) Creating a false profile for the purpose of having one or
12 more of the effects listed in paragraph (1). “False profile” means
13 a profile of a fictitious pupil or a profile using the likeness or
14 attributes of an actual pupil other than the pupil who created the
15 false profile.

16 (B) Notwithstanding paragraph (1) and subparagraph (A), an
17 electronic act shall not constitute pervasive conduct solely on the
18 basis that it has been transmitted on the Internet or is currently
19 posted on the Internet.

20 (3) “Reasonable pupil” means a pupil, including, but not limited
21 to, an exceptional needs pupil, who exercises average care, skill,
22 and judgment in conduct for a person of his or her age, or for a
23 person of his or her age with his or her exceptional needs.

24 (s) A pupil shall not be suspended or expelled for any of the
25 acts enumerated in this section unless the act is related to a school
26 activity or school attendance occurring within a school under the
27 jurisdiction of the superintendent of the school district or principal
28 or occurring within any other school district. A pupil may be
29 suspended or expelled for acts that are enumerated in this section
30 and related to a school activity or school attendance that occur at
31 any time, including, but not limited to, any of the following:

- 32 (1) While on school grounds.
33 (2) While going to or coming from school.
34 (3) During the lunch period whether on or off the campus.
35 (4) During, or while going to or coming from, a
36 school-sponsored activity.

37 (t) A pupil who aids or abets, as defined in Section 31 of the
38 Penal Code, the infliction or attempted infliction of physical injury
39 to another person may be subject to suspension, but not expulsion,
40 pursuant to this section, except that a pupil who has been adjudged

1 by a juvenile court to have committed, as an aider and abettor, a
2 crime of physical violence in which the victim suffered great bodily
3 injury or serious bodily injury shall be subject to discipline pursuant
4 to subdivision (a).

5 (u) As used in this section, “school property” includes, but is
6 not limited to, electronic files and databases.

7 (v) For a pupil subject to discipline under this section, a
8 superintendent of the school district or principal may use his or
9 her discretion to provide alternatives to suspension or expulsion
10 that are age appropriate and designed to address and correct the
11 pupil’s specific misbehavior as specified in Section 48900.5.

12 (w) It is the intent of the Legislature that alternatives to
13 suspension or expulsion be imposed against a pupil who is truant,
14 tardy, or otherwise absent from school activities.

15 *SEC. 1.5. Section 48900 of the Education Code is amended to*
16 *read:*

17 48900. A pupil shall not be suspended from school or
18 recommended for expulsion, unless the superintendent of the school
19 district or the principal of the school in which the pupil is enrolled
20 determines that the pupil has committed an act as defined pursuant
21 to any of subdivisions (a) to (r), inclusive:

22 (a) (1) Caused, attempted to cause, or threatened to cause
23 physical injury to another person.

24 (2) Willfully used force or violence upon the person of another,
25 except in self-defense.

26 (b) Possessed, sold, or otherwise furnished a firearm, knife,
27 explosive, or other dangerous object, unless, in the case of
28 possession of an object of this type, the pupil had obtained written
29 permission to possess the item from a certificated school employee,
30 which is concurred in by the principal or the designee of the
31 principal.

32 (c) Unlawfully possessed, used, sold, or otherwise furnished,
33 or been under the influence of, a controlled substance listed in
34 Chapter 2 (commencing with Section 11053) of Division 10 of the
35 Health and Safety Code, an alcoholic beverage, or an intoxicant
36 of any kind.

37 (d) Unlawfully offered, arranged, or negotiated to sell a
38 controlled substance listed in Chapter 2 (commencing with Section
39 11053) of Division 10 of the Health and Safety Code, an alcoholic
40 beverage, or an intoxicant of any kind, and either sold, delivered,

1 or otherwise furnished to a person another liquid, substance, or
2 material and represented the liquid, substance, or material as a
3 controlled substance, alcoholic beverage, or intoxicant.

4 (e) Committed or attempted to commit robbery or extortion.

5 (f) Caused or attempted to cause damage to school property or
6 private property.

7 (g) Stole or attempted to steal school property or private
8 property.

9 (h) Possessed or used tobacco, or products containing tobacco
10 or nicotine products, including, but not limited to, cigarettes, cigars,
11 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
12 packets, and betel. However, this section does not prohibit the use
13 or possession by a pupil of his or her own prescription products.

14 (i) Committed an obscene act or engaged in habitual profanity
15 or vulgarity.

16 (j) Unlawfully possessed or unlawfully offered, arranged, or
17 negotiated to sell drug paraphernalia, as defined in Section 11014.5
18 of the Health and Safety Code.

19 (k) (1) Disrupted school activities or otherwise willfully defied
20 the valid authority of supervisors, teachers, administrators, school
21 officials, or other school personnel engaged in the performance of
22 their duties.

23 (2) Except as provided in Section 48910, a pupil enrolled in
24 kindergarten or any of grades 1 to 3, inclusive, shall not be
25 suspended for any of the acts enumerated in this subdivision, and
26 this subdivision shall not constitute grounds for a pupil enrolled
27 in kindergarten or any of grades 1 to 12, inclusive, to be
28 recommended for expulsion. This paragraph shall become
29 inoperative on July 1, 2018, unless a later enacted statute that
30 becomes operative before July 1, 2018, deletes or extends that
31 date.

32 (l) Knowingly received stolen school property or private
33 property.

34 (m) Possessed an imitation firearm. As used in this section,
35 “imitation firearm” means a replica of a firearm that is so
36 substantially similar in physical properties to an existing firearm
37 as to lead a reasonable person to conclude that the replica is a
38 firearm.

39 (n) Committed or attempted to commit a sexual assault as
40 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal

1 Code or committed a sexual battery as defined in Section 243.4
2 of the Penal Code.

3 (o) Harassed, threatened, or intimidated a pupil who is a
4 complaining witness or a witness in a school disciplinary
5 proceeding for purposes of either preventing that pupil from being
6 a witness or retaliating against that pupil for being a witness, or
7 both.

8 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
9 sold the prescription drug Soma.

10 (q) Engaged in, or attempted to engage in, hazing. For purposes
11 of this subdivision, “hazing” means a method of initiation or
12 preinitiation into a pupil organization or body, whether or not the
13 organization or body is officially recognized by an educational
14 institution, that is likely to cause serious bodily injury or personal
15 degradation or disgrace resulting in physical or mental harm to a
16 former, current, or prospective pupil. For purposes of this
17 subdivision, “hazing” does not include athletic events or
18 school-sanctioned events.

19 (r) Engaged in an act of bullying. For purposes of this
20 subdivision, the following terms have the following meanings:

21 (1) “Bullying” means any severe or pervasive physical or verbal
22 act or conduct, including communications made in writing or by
23 means of an electronic act, and including one or more acts
24 committed by a pupil or group of pupils as defined in Section
25 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
26 that has or can be reasonably predicted to have the effect of one
27 or more of the following:

28 (A) Placing a reasonable pupil or pupils in fear of harm to that
29 pupil’s or those pupils’ person or property.

30 (B) Causing a reasonable pupil to experience a substantially
31 detrimental effect on his or her physical or mental health.

32 (C) Causing a reasonable pupil to experience substantial
33 interference with his or her academic performance.

34 (D) Causing a reasonable pupil to experience substantial
35 interference with his or her ability to participate in or benefit from
36 the services, activities, or privileges provided by a school.

37 (2) (A) “Electronic act” means the creation or transmission
38 originated on or off the schoolsite, by means of an electronic
39 device, including, but not limited to, a telephone, wireless
40 telephone, or other wireless communication device, computer, or

1 pager, of a communication, including, but not limited to, any of
2 the following:

3 (i) A message, text, sound, *video*, or image.

4 (ii) A post on a social network Internet Web site, including, but
5 not limited to:

6 (I) Posting to or creating a burn page. “Burn page” means an
7 Internet Web site created for the purpose of having one or more
8 of the effects listed in paragraph (1).

9 (II) Creating a credible impersonation of another actual pupil
10 for the purpose of having one or more of the effects listed in
11 paragraph (1). “Credible impersonation” means to knowingly and
12 without consent impersonate a pupil for the purpose of bullying
13 the pupil and such that another pupil would reasonably believe, or
14 has reasonably believed, that the pupil was or is the pupil who was
15 impersonated.

16 (III) Creating a false profile for the purpose of having one or
17 more of the effects listed in paragraph (1). “False profile” means
18 a profile of a fictitious pupil or a profile using the likeness or
19 attributes of an actual pupil other than the pupil who created the
20 false profile.

21 (iii) *An act of cyber sexual bullying.*

22 (I) *For purposes of this clause, “cyber sexual bullying” means*
23 *the dissemination of, or the solicitation or incitement to*
24 *disseminate, a photograph or other visual recording by a pupil to*
25 *another pupil or to school personnel by means of an electronic*
26 *act that has or can be reasonably predicted to have one or more*
27 *of the effects described in subparagraphs (A) to (D), inclusive, of*
28 *paragraph (1). A photograph or other visual recording, as*
29 *described above, shall include the depiction of a nude, semi-nude,*
30 *or sexually explicit photograph or other visual recording of a*
31 *minor where the minor is identifiable from the photograph, visual*
32 *recording, or other electronic act.*

33 (II) *For purposes of this clause, “cyber sexual bullying” does*
34 *not include a depiction, portrayal, or image that has any serious*
35 *literary, artistic, educational, political, or scientific value or that*
36 *involves athletic events or school-sanctioned activities.*

37 (B) Notwithstanding paragraph (1) and subparagraph (A), an
38 electronic act shall not constitute pervasive conduct solely on the
39 basis that it has been transmitted on the Internet or is currently
40 posted on the Internet.

(3) “Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, “school property” includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil’s specific misbehavior as specified in Section 48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 48900 of the Education Code proposed by both this bill and Assembly Bill 2536. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 48900 of the Education Code,

- 1 *and (3) this bill is enacted after Assembly Bill 2536, in which case*
- 2 *Section 1 of this bill shall not become operative.*

O